

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

*IN RE: Motion of Non-Party JANE DOE*

ELIZABETH SINES, et al.,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendant.

Case No. 3:18-mc-80080-JCS

**DECLARATION OF JOSHUA J.  
LIBLING IN SUPPORT OF  
PLAINTIFFS' MEMORANDUM OF  
LAW IN OPPOSITION TO JANE  
DOE'S MOTION TO QUASH  
SUBPOENA FOR DOCUMENTS  
TO DISCORD, INC.**

1. I am an attorney duly licensed to practice law in the State of New York and am Counsel with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs in an action pending in the United States District Court for the Western District of Virginia captioned *Sines v. Kessler*, Civil Action No. 17-CV-72, before the Honorable Judge Moon (the "Virginia Action"). I am admitted to practice in New York, the Supreme Court of the United States, the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York and the District of Colorado.

2. The matters stated herein are based on my personal knowledge and, if called upon to testify, I could and would testify competently thereto. I submit this declaration in support of Plaintiffs' Memorandum of Law in Opposition to Jane Doe's Motion to Quash Subpoena for Documents to Discord, Inc.

**I. Relevant Virginia Action Filings and Documents**

3. The Virginia Action was commenced on October 12, 2017. Discord, Inc. is not, and Jane Doe is not believed to be, party to that action. A true and correct copy of the operative First Amended Complaint in the Virginia Action (the "FAC") is attached as **Exhibit 1**.

4. Attached as **Exhibit 2** is a true and correct copy of Plaintiffs' Subpoena for Documents to Discord, Inc., dated January 2, 2018 (the "Subpoena").

5. Attached as **Exhibit 3** is a true and correct copy of the Order for the Production of Documents and Exchange of Confidential Information in the Virginia Action, dated January 3, 2018.

## **II. Discord and Involvement of "kristall.night" on Discord**

6. Where the FAC cites or quotes statements and images posted on servers and channels operated by Discord, Inc. ("Discord"), those statements and images were made available by the website "Unicorn Riot Discord Leaks," which is available at <http://discordleaks.unicornriot.ninja/discord>. Plaintiffs to the Virginia Action believe the Unicorn Riot leaks of Discord documents to be accurate, and are not aware of any Defendant denying their accuracy, but do not have an independent way of verifying the information at this time. For a variety of reasons, including statements made by users of the relevant servers on Discord, Plaintiffs do not believe the Unicorn Riot leaks to be comprehensive.

7. Attached as **Exhibit 4** is a true and correct copy of an August 14, 2017, tweet by Discord reading, in part, "Today, we've shut down the alright.com server and a number of accounts associated with the events in Charlottesville." This tweet is available at <https://twitter.com/discordapp/status/897170310348263426>.

8. Attached as **Exhibits 5-16** are true and correct copies of the following messages that user "kristall.night" posted on Discord and that were released by Unicorn Riot:

- a. "Truly. I hate miscegenation so much more after actually talking to mixed race people about their identity. It's just really sad." (June 25, 2017), available at <https://discordleaks.unicornriot.ninja/discord/view/241651?q=#msg> (**Exhibit 5**);
- b. "This was my dream. Can we please start chasing these fucking degenerates into hiding?" (June 30, 2017), available at <https://discordleaks.unicornriot.ninja/discord/view/223306?q=#msg> (**Exhibit 6**);

- 1 c. “Without complicit whites, Jews wouldn’t be a problem.” (June 30, 2017),  
2 available at <https://discordleaks.unicornriot.ninja/discord/view/242281?q=#msg>  
3 **(Exhibit 7)**;
- 4 d. “If you want people to fight in the streets, you don’t attract them by being nice.”  
5 (June 30, 2017), available at  
6 <https://discordleaks.unicornriot.ninja/discord/view/235625?q=#msg> **(Exhibit 8)**;
- 7 e. “By fighting, and inspiring others to do the same.” (June 30, 2017), available at  
8 <https://discordleaks.unicornriot.ninja/discord/view/244350?q=#msg> **(Exhibit 9)**;
- 9 f. “Get there before dark 🦇” (July 12, 2017), available at  
10 <https://discordleaks.unicornriot.ninja/discord/view/241154?q=#msg> **(Exhibit 10)**;
- 11 g. “Do not bring: . . . weapons you're inexperienced with using in a fight in a  
12 crowded area . . . . Do bring: . . . shields if you have them, a helmet, banners/flags,  
13 a good flag pole . . . .” (July 21, 2017), available at  
14 <https://discordleaks.unicornriot.ninja/discord/view/247144?q=#msg> **(Exhibit 11)**;
- 15 h. “There are some really nice hardwood poles that are two piece, but also cheaper  
16 ones that won’t be very useful to double as spears lol” (July 24, 2017), available at  
17 <https://discordleaks.unicornriot.ninja/discord/view/219258?q=#msg> **(Exhibit 12)**;
- 18 i. “But yeah, if you want to use it as a club, you’ll want something shorter lol” (July  
19 24, 2017), available at  
20 <https://discordleaks.unicornriot.ninja/discord/view/219519?q=#msg> **(Exhibit 13)**;
- 21 j. “Sorry, I was away from discord, but the quote I posted wasn’t intended to support  
22 women going to violent political rallies. Quite the opposite.” (July 27, 2017),  
23 available at <https://discordleaks.unicornriot.ninja/discord/view/240602?q=#msg>  
24 **(Exhibit 14)**;
- 25 k. “Purchase self defense insurance” (August 9, 2017) available at  
26 <https://discordleaks.unicornriot.ninja/discord/view/247647?q=#msg> **(Exhibit 15)**;
- 27  
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1. “@Izat - VA shield wall should be at the ready in case these people get pushed in your direction” (August 12, 2017), available at <https://discordleaks.unicornriot.ninja/discord/view/241644?q=#msg> (**Exhibit 16**);

### **III. Plaintiffs’ Negotiations with Discord Regarding the Subpoena**

9. Plaintiffs began negotiating the scope and method of production with Discord shortly after the Subpoena was served. During those negotiations, Discord confirmed that among the servers it had “shut down” (Ex. 4) were the AltRight.com, Charlottesville 2.0, Anticom, and Southern Front servers referenced in the Subpoena. To Plaintiffs’ knowledge, and based on these conversations with Discord, the content of these servers and information about them, to the extent that such information still exists, is available only through backup tapes in Discord’s possession.<sup>1</sup>

10. As a result of correspondence and telephonic meet-and-confers in January and February 2018, Plaintiffs understand that Discord maintains separate backups for user account information (*e.g.*, email addresses and other contact information), server information, and content (*e.g.*, user messages and posts, including images and other media).

11. Based on the communications received from Discord, Plaintiffs understand that Discord has not yet begun restoration of the content backups. It has begun or completed restoration of some relevant server and user account backups.

12. In a March 12, 2018, email, Discord informed Plaintiffs that it had completed restoration of backup tapes sufficient to begin identification of user accounts associated with the servers mentioned in the Subpoena.

13. In an April 20, 2018, email, a true and correct copy of which, omitting prior emails in the same chain, is attached as **Exhibit 17**, Discord informed Plaintiffs that it had identified “32 accounts that it believes are responsive to Request for Production No. 7. By Wednesday, April 25, Discord will provide notice of the subpoena to the email addresses associated with those 32

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<sup>1</sup> Additional relevant servers, including “Front and Center,” “Operation Wolverine,” and “MI Goy Scouts – Official” recently came to light. To Plaintiffs’ knowledge, and based on conversations with Discord, the content of these additional servers and information about them, to the extent that such information exists, is similarly available only through backup tapes in Discord’s possession.

1 accounts. Discord will then allow the affected users 21 days to object to disclosure of their  
2 information via a motion to quash filed in the appropriate court. Assuming no user challenges,  
3 Discord would then produce responsive documents promptly following the objection period.”

4 a. Plaintiffs believe that it is through this process that Jane Doe became aware of the  
5 Subpoena, although Plaintiffs have no independent way of verifying this  
6 information.

7 b. Plaintiffs and Discord disagree as to the number of user accounts that are  
8 responsive to the Subpoena, but that disagreement is not germane to Jane Doe,  
9 whose information both Plaintiffs and Discord are treating as responsive.

10 c. Although Plaintiffs do seek the content of the messages on the servers listed in the  
11 Subpoena, as well as other relevant messages, the initial production referred to in  
12 Discord’s April 20 email is of user account information only. Indeed, Discord has  
13 not yet restored the content backups.

14 14. Plaintiffs and Discord have repeatedly discussed the requirements of the Stored  
15 Communications Act (“SCA”). For example, and in reference to Plaintiffs’ desire to receive the  
16 contents of the servers identified in the Subpoena, on April 27, 2018, Discord proposed, “For the  
17 32 accounts Discord has already identified, and active accounts owned by the defendants in your  
18 lawsuit, Discord proposes an account-based production process. Under this proposal . . . [f]or the  
19 32 accounts that Discord has already notified, it would now seek the affirmative consent of the  
20 affected account holders to disclose to you all active communications and messages associated  
21 with the account, across Discord. For the affected account holders who affirmatively consent to  
22 that disclosure, Discord would then compile and produce to you copies of all active  
23 communications and messages associated with that account across Discord.” A true and correct  
24 copy of this email, omitting prior emails in the same chain, is attached as **Exhibit 18**.

25 15. Plaintiffs and Discord continue to negotiate the scope and manner of the  
26 production of message contents, including discussing various methods of complying with the  
27 SCA. To date, Plaintiffs do not believe that any such production is imminent (or, indeed, that the  
28 relevant backups have been restored).

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 6th day of June, 2018, at New York, New York.

Respectfully submitted,  
By: /s/ Joshua J. Libling  
Joshua J. Libling

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that, on June 6, 2018, I filed the foregoing with the Clerk of Court  
3 through the CM/ECF system, which will send a notice of electronic filing to counsel for Jane  
4 Doe:

5 Marc J. Randazza  
6 Alex J. Shepard  
7 Randazza Legal Group, PLLC  
8 274 Lake Sahara Drive, Suite 109  
9 Las Vegas, NV 89117  
10 mjr@randazza.com  
11 ajs@randazza.com

12 *Counsel for Movant Jane Doe*

13 I further hereby certify that, on June 6, 2018, I served the following participants in the  
14 underlying matter via email:

15 Justin Saunders Gravatt  
16 David L. Hauck  
17 David L. Campbell  
18 Duane, Hauck, Davis & Gravatt, P.C.  
19 100 West Franklin Street, Suite 100  
20 Richmond, VA 23220  
21 jgravatt@dhdglaw.com  
22 dhauck@dhdglaw.com  
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*Counsel for Defendants Michael Hill, Michael  
Tubbs, and League of the South*

18 *Counsel for Defendant James A. Fields, Jr.*

19 Elmer Woodard  
20 5661 US Hwy 29  
21 Blairs, VA 24527  
22 isuecrooks@comcast.net

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jek318@gmail.com

23 *Counsel for Defendants Jeff Schoep, Nationalist Front, National Socialist Movement, Matthew  
24 Parrott, Matthew Heimbach, Robert Ray, Traditionalist Worker Party, Elliot Kline, Jason  
25 Kessler, Vanguard America, Nathan Damigo, Identity Europa, Inc. (Identity Evropa), and  
26 Christopher Cantwell*

26 John A. DiNucci  
27 Law Office of John A. DiNucci  
28 8180 Greensboro, Drive, Suite 1150  
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dinuccilaw@outlook.com

1 *Counsel for Defendant Richard Spencer*

2 Michael Peinovich a/k/a Michael "Enoch" Peinovich  
3 PO Box 1069  
4 Hopewell Junction, NY 12533  
mpeinovich@gmail.com

5 *Pro Se Defendant*

6 I further hereby certify that, on June 6, 2018, I caused the following participants in the  
7 underlying material to be served via U.S. mail, First Class and postage prepaid, addressed as  
8 follows:

9 Loyal White Knights of the Ku Klux Klan  
10 a/k/a Loyal White Knights Church of  
11 the Invisible Empire, Inc.  
12 c/o Chris and Amanda Barker  
P.O. Box 54  
Pelham, NC 27311

Andrew Anglin  
P.O. Box 208  
Worthington, OH 43085

13 Moonbase Holdings, LLC  
14 c/o Andrew Anglin  
15 P.O. Box 208  
Worthington, OH 43085

Fraternal Order of the Alt-Knights  
c/o Kyle Chapman  
52 Lycett Circle  
Daly City, CA 94015

16  
17 East Coast Knights of the Ku Klux Klan  
18 a/k/a East Coast Knights of the  
19 True Invisible Empire  
20 26 South Pine St.  
Red Lion, PA 17356

Augustus Sol Invictus  
9823 4th Avenue  
Orlando, FL 32824

21  
22 /s/ Sean P. Rodriguez

23 Sean P. Rodriguez (SBN 262437)  
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27 *Attorney for Plaintiffs*  
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**FILER’S ATTESTATION**

I, Sean P. Rodriguez, am the ECF user whose identification and password are being used to file this Declaration. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that the signatory on this document has concurred in this filing.

/s/ Sean P. Rodriguez  
Sean P. Rodriguez (SBN 262437)